

Message Text

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47

ACTION EUR-25

INFO OCT-01 ISO-00 L-03 CPR-02 SCA-01 SCS-03 INR-10 SS-20

PM-07 NSC-07 SY-04 SP-03 M-02 A-01 RSC-01 DRC-01

/091 W

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R 280905Z JUN 74

FM AMEMBASSY WARSAW

TO SECSTATE WASHDC 9742

LIMITED OFFICIAL USE WARSAW 3671

E.O. 11652: N/A

TAGS: CPRS, PL

SUBJECT: U.S.-POLISH CONSULAR CONVENTION

1. IN RESPONSE TO ARREST AND LENGTHY DETENTION IN WARSAW OF AMCIT ZYGMUNT HOLY, EMBASSY HAS REPEATEDLY REQUESTED PERMISSION FOR CONSULAR OFFICER VISIT AND COMMUNICATE FREELY WITH MR. HOLY. WE HAVE CITED CONSULAR CONVENTION, ARTICLE 29, PARAGRAPHS, 3, 5, AND 6, AS PROVISIONS GUARANTEEING THIS RIGHT. PHYSICAL MEETING ARRANGEMENTS ENCOUNTERED BY CONSULAR OFFICER UPON ARRIVAL AT PRISON HAVE TAKEN SEVERAL FORMS, BUT ON EVERY OCCASION PRISON OR PROSECUTION OFFICIAL HAS BEEN IN ATTENDANCE, AND ON ALL OCCASIONS BUT ONE TRANSLATOR ALSO HAS BEEN PRESENT. DURING LENGTHY PERIOD OF INVESTIGATIVE DETENTION, CONSULAR OFFICER WAS NOT ONLY DENIED PERMISSION VISIT PRIVATELY WITH MR. HOLY, BUT ENJOINED FROM DISCUSSING ANY ASPECT OF CRIMINAL CHARGES INVOLVED. IN PERIOD SINCE FORMAL INDICTMENT PLACED WITH POLISH COURT, NO RESTRICTION ON SUBJECT OF DISCUSSION HAS BEEN INDICATED, BUT PRIVATE VISITS STILL FORBIDDEN.

2. REPRESENTATIONS TO MFA HAVE BEEN UNAVAILING. MFA'S INTERPRETATION IS THAT ARTICLE 29, PARAGRAPHS 3 AND 5, STIPULATE THAT VISITS AND COMMUNICATION WILL BE IN LIMITED OFFICIAL USE

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ACCORDANCE WITH "THE LAWS AND REGULATIONS OF RECEIVING

STATE" AND "SUBJECT TO LOCAL PRISON REGULATIONS."
EMBASSY HAS NOTED THAT ARTICLE 29, PARAGRAPHS 6, CLEARLY
MODIFIES PARAGRAPHS 3 AND 5 OF SAME ARTICLE AND STATES
THAT APPLICATION OF LAWS AND REGULATIONS OF RECEIVING
STATE, INCLUDING PRISON REGULATIONS, SHALL NOT PREVENT
CONSULAR OFFICER FROM VISITING HIS NATIONAL AND COMMUNICA-
TING FREELY WITH HIM. TO SOME EXTENT PROBLEM IS
SEMANTIC DISAGREEMENT OVER WHAT IS "FREE COMMUNICATION."
EMBASSY'S VIEW IS THAT PRESENCE OF POLISH OFFICIAL AT SAME
TABLE OR HOVERING NEARBY IN NO WAY PERMITS UNRESTRICTED
CONVERSATION OR FREE COMMUNICATION.

3. EMBASSY WILL APPRECIATE DEPARTMENT'S GUIDANCE RE-
GARDING EXISTENCE INTERNATIONALLY ACCEPTED DEFINITION OF
FREE COMMUNICATION. IN EFFORT TO GET GOP TO AGREE ON
A MUTUALLY ACCEPTABLE DEFINITION OF FREE COMMUNICATION,
I RECOMMEND THAT THE MATTER BE TAKEN UP WITH
THE POLISH AMBASSADOR AT THE DEPUTY ASSISTANT
SECRETARY LEVEL. I WOULD RAISE
THE MATTER AGAIN WITH VICE MINISTER
SPASOWSKI AT THE SAME TIME.
DAVIES

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NNN

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